

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.215 of the)	RM-11620
Commission's Rules and Regulations)	
Contour Protection for Short-Spaced)	
FM Assignment)	
)	
To: Marlene Dortch, Secretary		
Federal Communications Commission		
Attn: Media Bureau		

CALVARY CHAPEL'S REPLY TO "COMMENTS OF OWENS ONE COMPANY, INC."

Pursuant to Section 1.405(b) of the Commission's Rules and Regulations, Calvary Chapel of Costa Mesa, Inc. ("Calvary"), by its attorney, hereby respectfully replies to the Comments of Owens One Company, Inc. ("Owens"), filed in this proceeding on March 17, 2011. In reply thereto, it is alleged:

I. Preliminary Statement.

1. This proceeding has its genesis in an application by Calvary, filed on September 19, 2007, to remove a directional antenna at Station KWVE-FM, San Clemente, California, and replace that antenna with a non-directional antenna. The application required a waiver of Section 73.215 of the Commission's Rules because the directional antenna was installed to avoid received overlap from Station KUZZ-FM, Bakersfield, California, a station which is owned by Owens. Owens opposed the waiver on the grounds that "rules are rules" and that if Calvary wanted to remove the directional antenna it should institute a rule making to change the provisions of Section 73.215.

2. The Commission staff denied the waiver and dismissed Calvary's application.¹ Therefore, Calvary has done exactly what Owens complained that Calvary should do: File a Petition for Rule Making ("Petition").

3. By Public Notice dated February 18, 2011, the Commission gave notice of Calvary's Petition. The time for filing comments has expired and -- although the Petition was widely published and discussed on the Internet, and at least four prominent engineering firms filed comments in support of the Petition -- no opposing comments have been filed except for the Comments filed by Owens. We find these Comments inexplicable. Station KWVE-FM does not and would not cause any interference to Owens' station. The two stations -- KWVE-FM and KUZZ-FM -- are not economic competitors; they are situated in completely different markets and have vastly different formats. The rule change that we propose will in no way cause any injury to Owens. Owens has no dog in this fight; it will suffer no injury of any kind if the rule is changed. As for the purported 905 stations that Owens claims will be affected, what is telling is that not one of them has challenged Calvary's Petition. The reason is simple: Their protected contours will not be modified by our proposal. Nor will Owens' protected contour be altered in any way. Therefore, no interference to these facilities will occur. These stations are not "victims" as Owens would have us believe. Thus, we continue to be baffled by Owens' opposition.

II. Contrary to Owens' Arguments, the Proposed Change Will Not Create Elevation Calculation Problems Or Widespread Grandfathering.

4. In an engineering statement attached to Owens' Comments, Erik C. Swanson claims that there are 905 stations with hypothetical buried antennas which will be affected by the proposed rule change. His statement is unsupported but, if true, underscores that

¹ Calvary has, of course, petitioned for reconsideration. Therefore, the application remains alive.

the buried antenna problem is widespread and in need of remedial action. While the protected contours of these 905 stations will not change, their interfering contours will be adjusted. However, even this action will not necessarily lead to a contour overlap requiring grandfathering unless (a) a short-spacing already exists (thus triggering contour evaluation), and (b) the relevant interfering contour happens to line up in a certain geometry so as to cause an overlap with a distant station. Mr. Swanson has not identified even one such situation where this will occur.

5. Furthermore, the claim that the proposed change would create widespread “grandfathering” is entirely unsupported and flat wrong. *Black’s Law Dictionary* (9th ed. 2009) defines a “grandfather clause” in pertinent part as:

“A provision that creates an exemption from the law’s effect for something that existed before the law’s effective date; specif., a statutory or regulatory clause that exempts a class of persons or transactions because of circumstances existing before the new rule or regulation takes effect.”

When the Commission issues a new rule that imposes new requirements, but exempts existing stations from compliance with that rule, the existing stations are said to be “grandfathered”. The Commission does this all of the time. In 1991, it changed the definition of interference for AM stations so that thousands of stations which formerly were subject to no interference were suddenly in violation of the new rule. The Commission did not require existing stations to make any changes to comply with the new rule, so they were said to be “grandfathered”. *In the Matter of Review of the Technical Assignment Criteria for the AM Broadcast Service*, 6 FCC Rcd 6273 (1991). Similarly, when the Commission tightened its multiple ownership rules to limit the number of stations that could be owned by a single entity in a single market, it did not require companies who were already over the quota to divest any stations. They were said to be “grandfathered”. *2002 Biennial Regulatory Review – Review of the Commission’s Broadcast*

Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Report and Order, 18 FCC Rcd 13620 (2003).

6. Where a proposed rule relaxes an existing rule no “grandfathering” takes place. No “grandfathering” is needed as a result of the change that we propose except, perhaps, in a very small number of cases where an interfering contour is extended and the protected contour of some distant Section 73.215 station is overlapped where no overlapping occurred before.

7. Mr. Swanson attempts to furnish illustrations where grandfathering may be needed, but all of his examples are faulty. In his engineering statement, he provides five examples (Figures 1-5) of cases where he claims the application of the new rule will expand the interfering contour in certain directions. In fact, however, Mr. Swanson’s examples are grievously flawed. As shown by the attached engineering exhibit prepared by John Mullaney, none of the stations Mr. Swanson selected have any short-spacings whatsoever. Contour protection has not been invoked, so Swanson’s examples are worthless. There are no contours to grandfather, because all required separations are met. Thus, the new rule will have absolutely no impact on these facilities one way or another and will not create any “grandfathering”. At page 5 of his statement, Mr. Swanson asserts that, “We could produce dozens (and perhaps hundreds) of examples given enough time.” So far, however, he has not produced even one single example where grandfathering would be created.

8. Swanson also argues that the use of site elevation to compute HAAT at vacant allotments could create “bias”. He argues that, “This proposal raises a serious question as to how the ground-level elevation above sea level will be determined.” Under FCC rules, the ground elevation at a tower base is determined and the antenna’s height is determined, then the

HAAT is calculated. Ground elevations all across the U.S. have been determined thousands of times using information published by the U.S. Geological Survey, with sufficient accuracy to satisfy the FCC. Under our proposal, it will now be necessary to compute ground elevations for the reference coordinates of vacant allotments. This is not difficult. If it can be done for an existing facility, it can be done for the reference coordinates of a vacant allotment. If there are small uncertainties involved in determining ground elevation, those uncertainties are not magnified or changed in any way by our proposal.

III. No Anomalous Protected and Interfering Contours Will Be Created.

9. Finally, Mr. Swanson alleges that “anomalous protected and interfering contours will be created” by the proposed rule change. Nothing could be further from the truth. The Petition for Rule Making recasts the way the interfering contour is calculated to reflect the elevations of real-world above ground antennas instead of imaginary buried antennas. In so doing, the Petition for Rule Making eliminates an anomaly in the rules and represents a monumental step forward. Sometimes, perhaps, as Mr. Swanson claims, the updated, interfering contour will result in a curiosity where the interfering contour is inside the protected contour for first adjacent channel situations, but that is *de minimis* compared to the elimination of buried antennas (sometimes more than 2,000 feet underground, see the Mullaney Engineering Statement) that if built would be incapable of meaningful radiation. Insofar as protected contours are concerned, no change in the established method of calculation has been recommended or proposed and, therefore, no anomaly will arise. Protected contours are familiar and time tested, and their average area tends to remain constant with elevation as opposed to interfering contours that shrink, as explained in the Petition for Rule Making. Any attempt at

reformulating protected contours would be completely unnecessary and create widespread disruption. We have deliberately avoided that.

IV. Overview and Summary.

10. In short, Calvary's Petition for Rule Making will not cause "multiple new engineering anomalies, grandfathering scenarios, and regulatory uncertainty" as Owens claims. Calvary has proposed a simple and straightforward cure to the buried antenna problem that particularly manifests itself in the interfering contour as explained in the Petition for Rule Making. In terms of grandfathering scenarios, Owens has failed to identify even one case where this would occur but, even if it did, that would not be a reason to deny the proposal, because the Commission frequently adopts new rules which require the grandfathering of existing facilities. Our proposal has been given widespread publicity and received substantial support from the engineering community - nobody has opposed it except Owens. As for the purported 905 stations that Owens claims will be affected, what is telling is that not one of them has challenged Calvary's Petition. Owens stands alone in its opposition, and Owens' opposition is deeply flawed. Therefore, the Commission should promptly issue a Notice of Proposed Rule Making looking towards the adoption of the change that we propose.

Respectfully submitted,

March 29, 2011

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CALVARY CHAPEL OF COSTA MESA, INC.

By: 

Lauren A. Colby
Its Attorney

EXHIBIT A

Engineering Exhibit

JOHN J. MULLANEY
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ALAN E. GEARING, P.E.
TIMOTHY Z. SAWYER

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Mullaney@MullEngr.com

MULLANEY ENGINEERING, INC.
9049 SHADY GROVE COURT
GAITHERSBURG, MD 20877

ENGINEERING EXHIBIT EE-REPLY:

**REPLY TO COMMENTS OF
OWENS ONE COMPANY, INC.**

**REGARDING - MODIFICATION OF 73.215
RM-11620**

MARCH 2011

ENGINEERING STATEMENT IN SUPPORT OF
A REPLY TO
“COMMENTS IN OPPOSITION TO RM-11620”
FILED BY OWENS ONE COMPANY, INC.

Prepared on behalf of
Calvary Chapel of Costa Mesa, Inc.

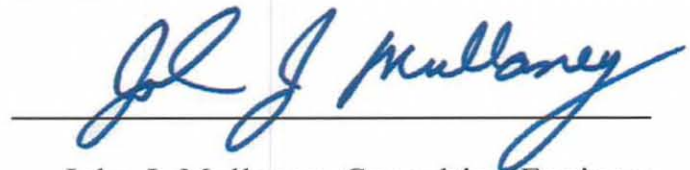
STATE OF MARYLAND)
COUNTY OF MONTGOMERY)

Declaration

I, John J. Mullaney, declare and state that I am a graduate electrical engineer with a B.E.E. and my qualifications are known to the Federal Communications Commission, and that I am a principal engineer in the firm of Mullaney Engineering, Inc., and that I have provided engineering services in the area of telecommunications since 1977. My qualifications as an expert in radio engineering are a matter of record with the Federal Communications Commission.

The firm of Mullaney Engineering, Inc., has been requested by **Calvary Chapel of Costa Mesa, Inc.**, to prepare the instant engineering exhibit in support of its reply to the opposition filed by Owens One Company, Inc.

All facts contained herein are true of my own knowledge except where stated to be on information or belief, and as to those facts, I believe them to be true. I declare under penalty of perjury that the foregoing is true and correct.



John J. Mullaney, Consulting Engineer

Executed on the 28th day of March 2011.

ENGINEERING EXHIBIT EE-REPLY:
REPLY TO COMMENTS OF
OWENS ONE COMPANY, INC.
REGARDING - MODIFICATION OF 73.215
RM-11620

NARRATIVE STATEMENT:

This engineering statement has been prepared on behalf of Calvary Chapel of Costa Mesa, Inc. ("Calvary"), licensee of KWVE-FM at San Clemente, CA, in support of its reply to the Comments in Opposition, filed by Owens One Company, Inc. ("Owens"). Owens filed its comments in response to the Public Notice released by the Commission on February 18, 2011, regarding RM-11620 (Report No. 2927). There the Commission sought comments on a rulemaking petition filed by Calvary requesting **modification of the Section 73.215 of the FM rules**.

Calvary is seeking to change the methodology by which the interference contour from the Non-73.215 station is computed when that station operates with an antenna center of radiation HAAT value that is significantly different from its AGL value resulting in **the hypothetical "buried" antenna**.

In support of its opposition, Owens relies on an engineering statement prepared by Eric Swanson, PE ("Swanson") of Hatfield & Dawson Consulting Electrical Engineers. However, that engineering statement fails to grasp the need of the proposed rule change and as such erroneously concludes disastrous results.

New Areas of Grandfathered Overlap Will Likely be Created - INCORRECT

We do not agree with the assertion by Owens that the proposed modification of Section 73.215 **will result in vast quantities of stations** being subjected for the first time to new areas of grandfathered contour overlap - - that is to new areas of prohibited contour overlap that did not exist under or more accurately stated **“was not properly identified under”** the current maximization procedure which assumed the flawed use of an **underground antenna** center of radiation.

It is recognized that while the distance to the interference contour is generally **reduced** using the proposed rule modification, there will be some minor areas (which are no longer masked by the incorrect use of negative HAAT values) where the interfering contour actually goes **“slightly” further** than it did under the current flawed method. However, it should be understood, that while **some minor new areas** of grandfathered overlap **might** be “identified” for the first time, they really have **“already exist” since the 73.215 short spacing was granted**. It is only the flawed use of a underground antenna assumption that prevented those areas of “real world” contour overlap from being properly identified and thus, failed to properly avoid this contour overlap as was the original intention when adopting Section 73.215.

It should be understood that for any of the 905 stations, identified as operating above the normal HAAT in a mountainous area, to have the “potential” of being identified with new areas of grandfathered contour overlap, that station would:

First have to have an “existing” short-spacing created under Section 73.215.

Secondly, the general direction toward the station which created the 73.215 short-spacing would also have to be in an area where the interference contour extended farther now under the modified method than it formerly did using the flawed underground antenna assumption. An extension of the interference contour is a good thing, since it now will prevent new, "real world" contour overlaps from being created or worsened, if now grandfathered.

Owens submits **five maps** which illustrate the relative locations of the protected 54 dBu contour of licensed Class B commercial FM stations and the location of the 1st adjacent interference contour **using both** the current and proposed modified 73.215 computational methods. They correctly point out that large portions of the interfering contour using the modified method is now located "within" the protected contour and in addition portions of the modified interference contour **extends for the first time outside** of the interference contour using the current method of maximization. However, contrary to Owens belief, **neither of these changes generate significant concern from an engineering prospective.**

It should be noted that Owens provided maps for five different Class B stations operating in California with excessive Class B HAATs. Those stations are:

Figure	Chan	ERP	HAAT	City of License
(1) KSRW	223B	0.87 kW	899 m	Independence, CA
(2) KFSO-FM	225B	17.5 kW	260 m	Visallia, CA
(3) KRHV	227B	0.89 kW	885 m	Big Pine, CA
(4) KMKX	228B	0.89 kW	876 m	Willits, CA
(5) KBOS-FM	235B	16.5 kW	259 m	Tulare, CA

Figures 1-5 are FM Channel Studies for each of these five stations using their licensed sites as the reference location and using the minimum separations specified in Section 73.207. **It should be noted that all five of these sample stations are 100% properly spaced** (at least as of March 2011). Since **none** of these five stations has been subjected to a previous Section 73.215 short-spacing - **it is “absolutely impossible” for any of these five stations to have the so called “Grandfathered Overlap”** Owens believes will result in uncertainty by the industry and the FCC staff. Any area which might involve an extension of the interference contours would not be considered to be Grandfathered since unless short-spaced contour overlap is not evaluated. The station creating a future short-spacing would have to eliminate such contour overlap in accordance with Section 73.215.

Summary

The proposed modification of Section 73.215 only changes how the interference contour “from” the other non-73.215 station is computed and only when its antenna center of radiation HAAT value exceeds the Class maximum and then only if its AGL & HAAT values significantly differ. The method of computing the distance to the protected contour of the non-73.215 station **does not change**; its protected contour will still be based upon “maximization” (underground antenna) for its Class of FM station. Contrary to the comments of Owens the proposed modification **does not offer the doom and gloom** impact it projects. To the contrary, there are substantial public benefits to be derived.

This proposed modification of the rule will restore the flexibility originally intended when the FCC adopted Section 73.215 without introducing any harmful affects on any other FM station.

Respectfully submitted,

MULLANEY ENGINEERING, INC.

28 March 2011

By:



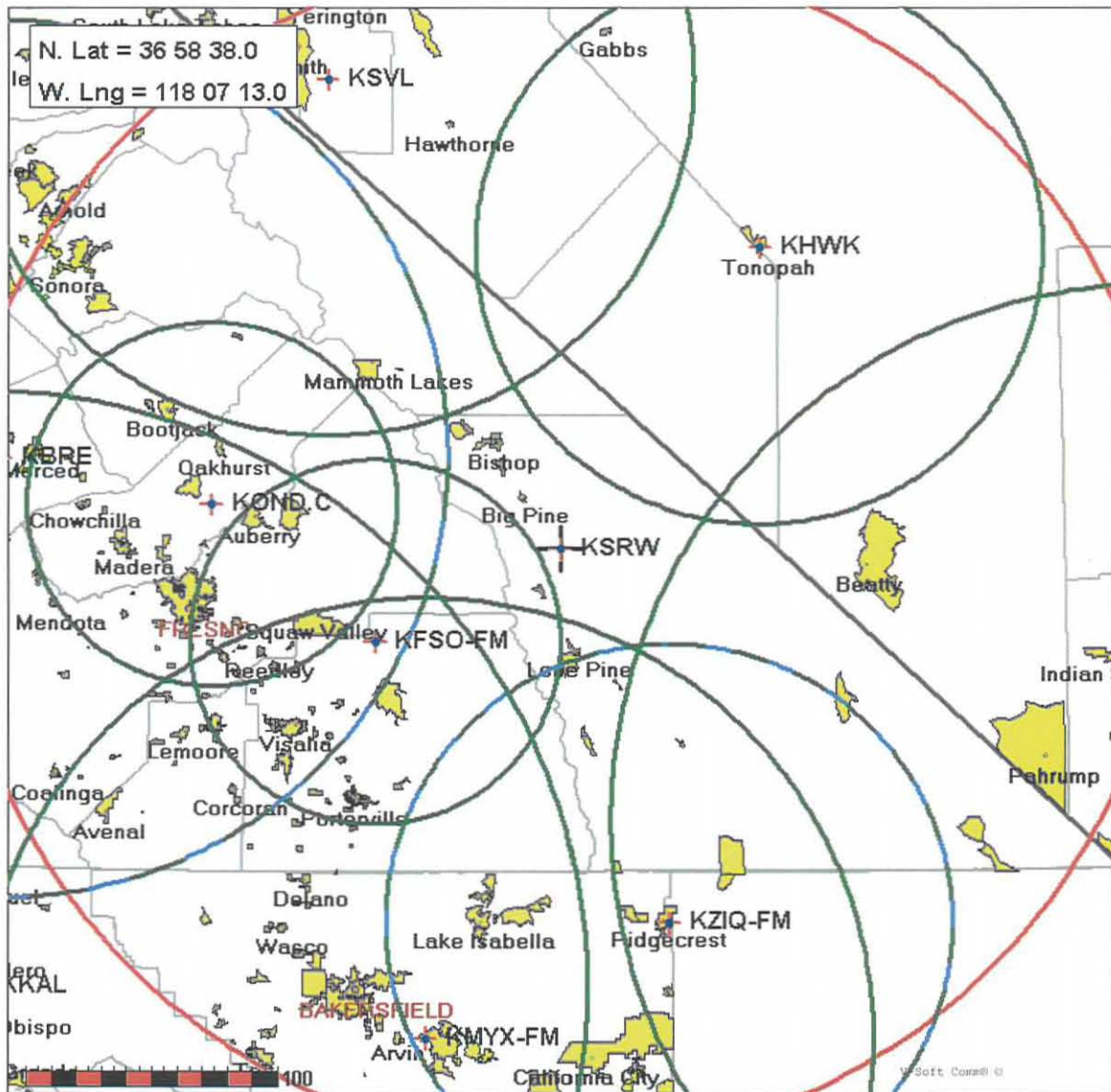
John J. Mullaney, President
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CH 223 B 92.5 MHz

Current Spacings to 3rd Adj.

Benett Kessler



		Data Date:03-19-11		Job Date:03-21-11				
Call	CH#	Type	Location	Azi	D-KM	FCC	Margin	
KSRW	223B	LIC	Independence	CA	0.0	0.0	240.5	---
KFSO-FM	225B	LIC	Visalia	CA	242.9	82.6	73.5	9.1
KMYX-FM	223A	LIC	Arvin	CA	195.1	204.6	177.5	27.1
KHWK	224A	LIC	Tonopah	NV	32.8	145.3	112.5	32.8
KOMP	222C	LIC	Las Vegas	NV	114.9	260.2	216.5	43.7
KZIQ-FM	224A	LIC-N	Ridgecrest	CA	164.1	157.0	112.5	44.5
KBRE	223A	LIC-Z	Atwater	CA	279.3	225.2	177.5	47.7
KKAL	223B	LIC	Paso Robles	CA	232.5	290.2	240.5	49.7
KOND	221B	LIC	Clovis	CA	277.4	139.5	73.5	66.0
KOND	221B	CP	Clovis	CA	277.4	139.5	73.5	66.0



FIGURE 1 - FM CHANNEL STUDY

KSRW - Ch. 223B - Independence, CA

(used by Owens in Opposition Comments)

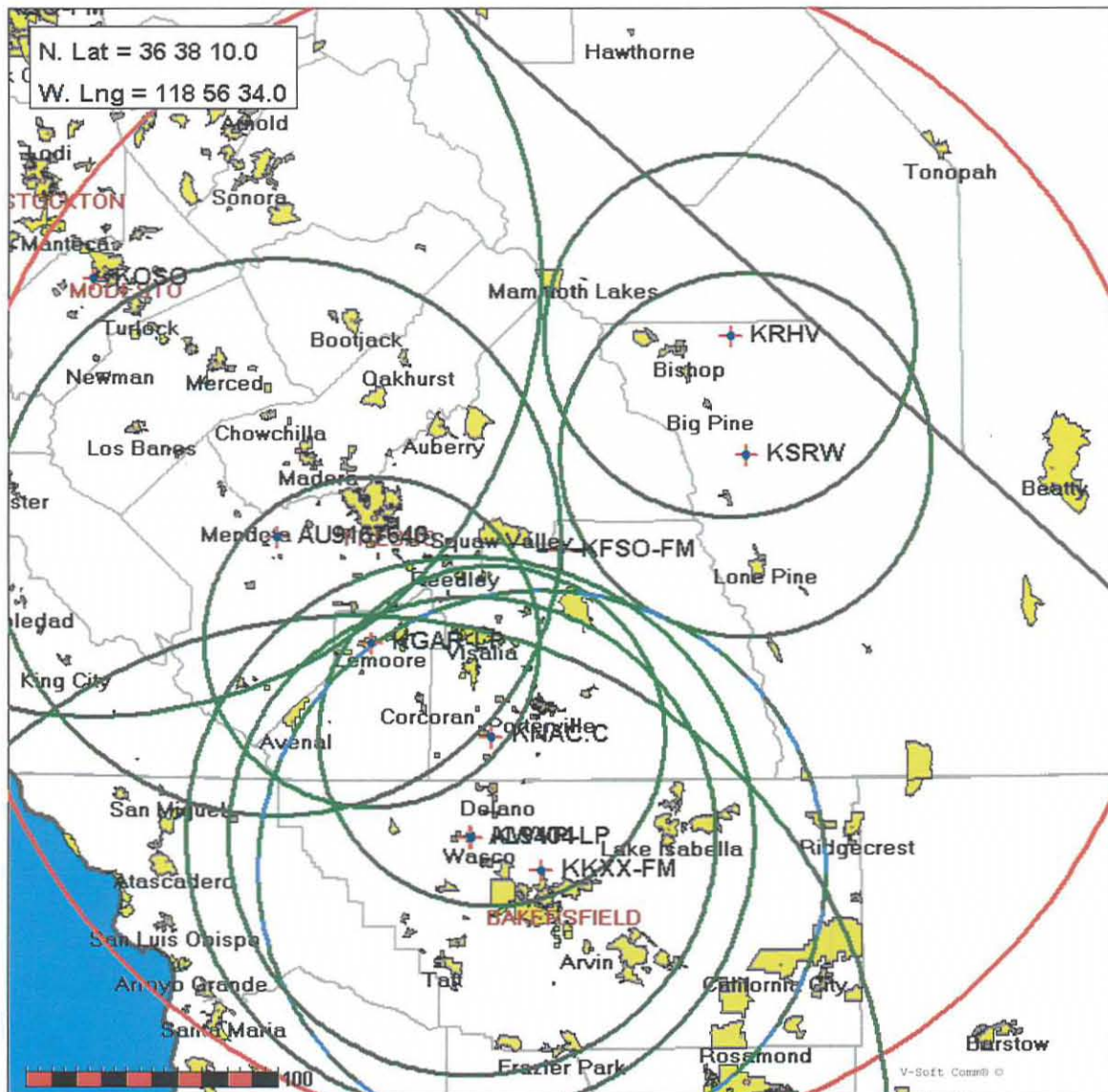
STATION HAS NO EXISTING SHORT SPACINGS

Calvary Chapel of Costa Mesa, Inc.

March 2011 - Reply Comments - RM-11620

CH 225 B 92.9 MHz
Current Spacings to 3rd Adj.

Capstar Tx Llc



Data Date:03-19-11 Job Date:03-22-11

Call	CH#	Type	Location		Azi	D-KM	FCC	Margin
KFSO-FM	225B	LIC	Visalia	CA	0.0	0.0	240.5	---
AU9167640	224A	VAC	Kerman	CA	272.7	112.7	112.5	0.20
AL9404	224A	VAC	Wasco	CA	197.4	121.2	112.5	8.7
KSRW	223B	LIC	Independence	CA	62.4	82.6	73.5	9.1
KNAC	228A	CP	Earlimart	CA	200.2	80.1	68.5	11.6
KKXX-FM	226A	LIC-N	Shafter	CA	183.4	129.3	112.5	16.8
KGAR-LP	227L1	LIC	Lemoore	CA	243.5	83.9	66.5	17.4
KWVP-LP	224L1	LIC	Wasco	CA	196.9	121.0	96.5	24.5
KRHV	227B	LIC	Big Pine	CA	37.6	109.5	73.5	36.0
KOSO	225A	LIC	Patterson	CA	300.7	215.6	177.5	38.1



FIGURE 2 - FM CHANNEL STUDY

KFSO-FM - Ch. 225B - Visalia, CA

(used by Owens in Opposition Comments)

STATION HAS NO EXISTING SHORT SPACINGS

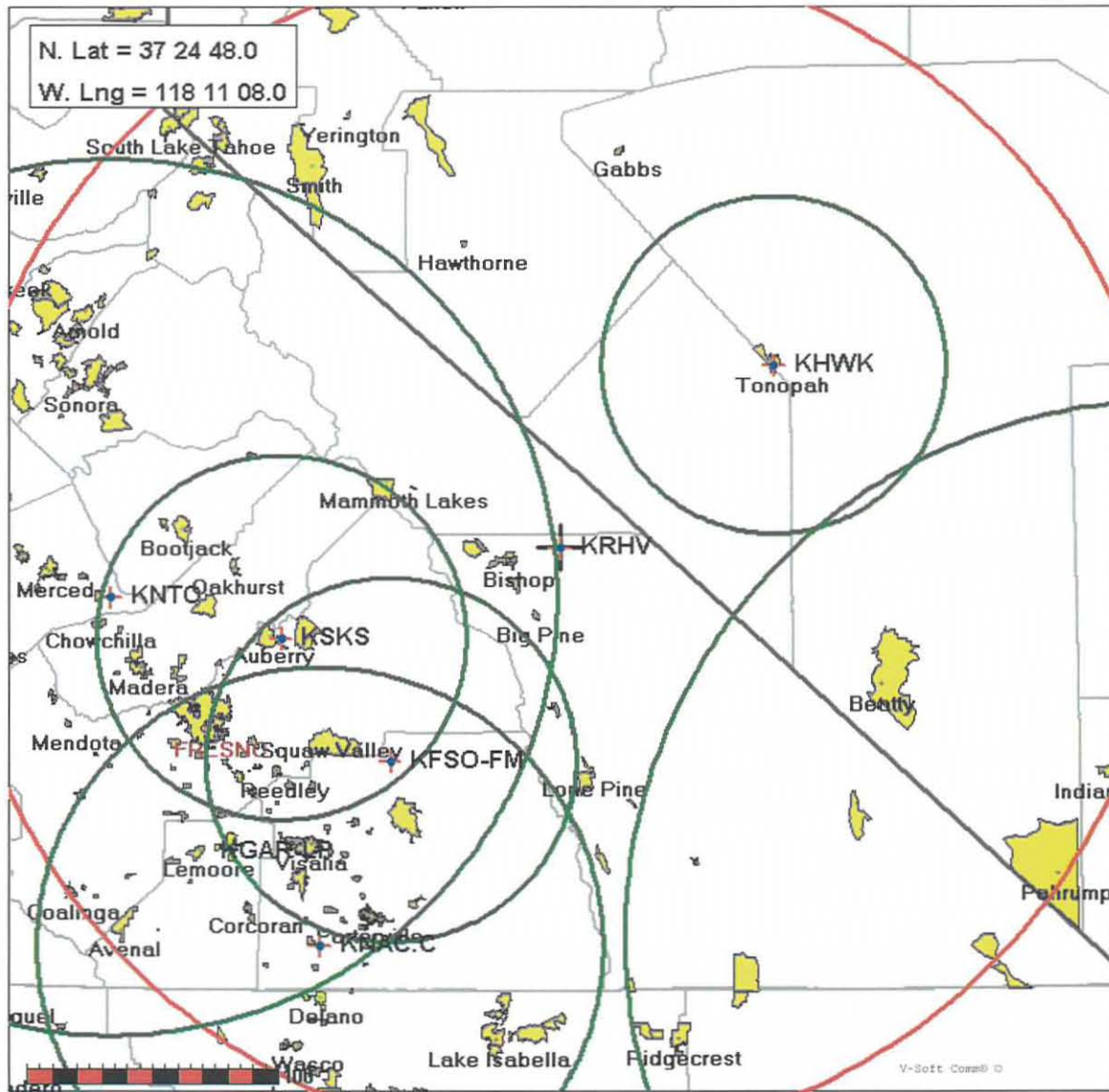
Calvary Chapel of Costa Mesa, Inc.

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CH 227 B 93.3 MHz

Current Spacings to 3rd Adj.

David A. And Maryann M. Digerness



Data Date:03-19-11			Job Date:03-22-11					
Call	CH#	Type	Location		Azi	D-KM	FCC	Margin
KRHV	227B	LIC	Big Pine	CA	0.0	0.0	240.5	---
KNTD	227A	LIC	Chowchilla	CA	263.6	179.8	177.5	2.3
KFSO-FM	225B	LIC	Visalia	CA	218.1	109.5	73.5	36.0
KSKS	229B	LIC	Fresno	CA	251.7	116.8	73.5	43.3
KHWK	224A	LIC	Tonopah	NV	48.9	112.2	68.5	43.7
KPLV	226C	LIC	Las Vegas	NV	123.1	288.6	216.5	72.1
KNAC	228A	CP	Earlimart	CA	210.7	187.4	112.5	74.9



FIGURE 3 - FM CHANNEL STUDY

KRHV - Ch. 227B - Big Pine, CA

(used by Owens in Opposition Comments)

STATION HAS NO EXISTING SHORT SPACINGS

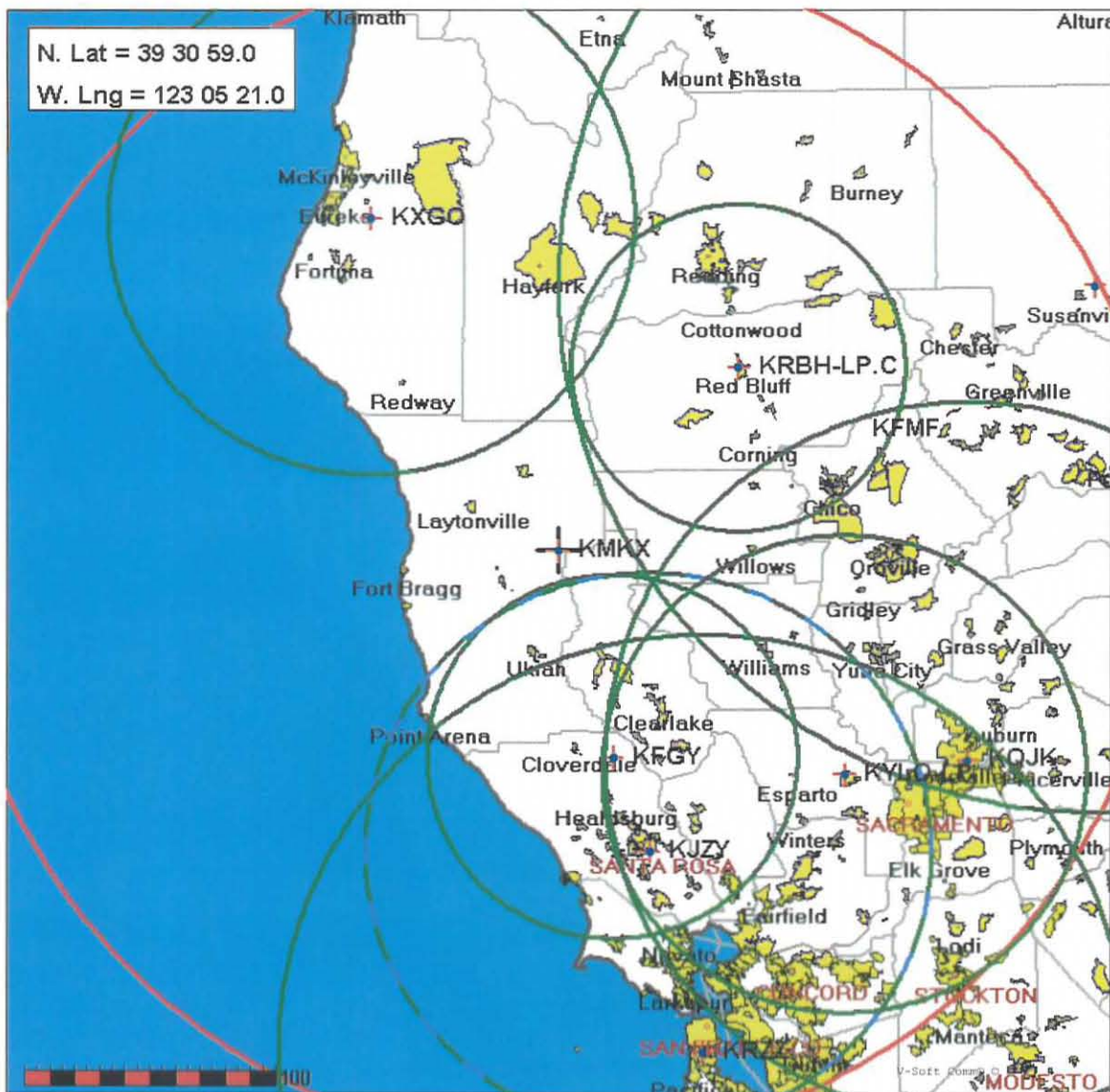
Calvary Chapel of Costa Mesa, Inc.

March 2011 - Reply Comments - RM-11620

CH 228 B 93.5 MHz

Current Spacings to 3rd Adj.

Radio Millennium L L C



Data Date:03-19-11			Job Date:03-22-11					
Call	CH#	Type	Location	Azi	D-KM	FCC	Margin	
KMKX	228B	LIC	Willits	CA	0.0	0.0	240.5	---
KFGY	225B	LIC	Healdsburg	CA	165.5	86.4	73.5	12.9
KJZY	229A	LIC-Z	Sebastopol	CA	163.6	127.0	112.5	14.5
KJDX	227C0	LIC	Susanville	CA	63.3	239.0	213.5	25.5
KRBH-LP	226L1	CP	Red Bluff	CA	44.1	102.6	66.5	36.1
KQJK	229B1	LIC	Roseville	CA	117.5	183.7	144.5	39.2
KRZZ	227B	LIC	San Francisco	CA	164.2	210.9	168.5	42.4
KYLO-LP	227L1	LIC	Woodland	CA	128.6	145.6	96.5	49.1
KXGO	226C	LIC	Arcata	CA	331.1	154.1	104.5	49.6



FIGURE 4 - FM CHANNEL STUDY

KMKX - Ch. 228B - Willits, CA

(used by Owens in Opposition Comments)

STATION HAS NO EXISTING SHORT SPACINGS

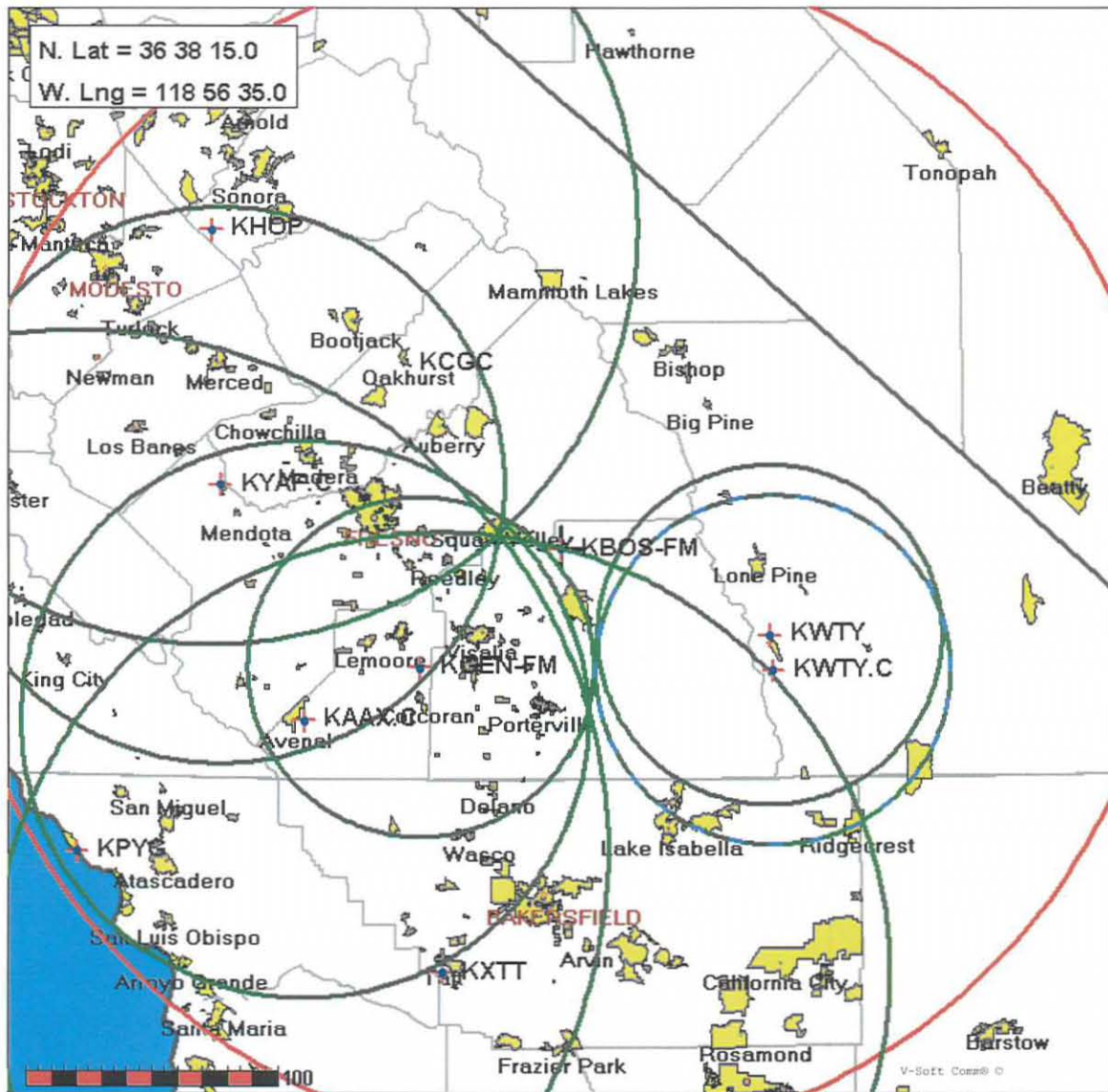
Calvary Chapel of Costa Mesa, Inc.

March 2011 - Reply Comments - RM-11620

CH 235 B 94.9 MHz

Current Spacings to 3rd Adj.

Capstar Tx Llc



Data Date:03-19-11 Job Date:03-22-11

Call	CH#	Type	Location		Azi	D-KM	FCC	Margin
KBOS-FM	235B	LIC	Tulare	CA	0.0	0.0	240.5	---
KXTT	235A	LIC	Maricopa	CA	195.4	177.5	177.5	0.02
KGEM-FM	233A	LIC	Hanford	CA	229.3	73.6	68.5	5.1
KAAX	236A	CP	Avenal	CA	235.8	123.1	112.5	10.6
KPYG	235B1	LIC	Cayucos	CA	237.6	227.3	210.5	16.8
KWTY	233A	LIC	Cartago	CA	112.9	89.6	68.5	21.1
KHOP	236B	LIC	Oakdale	CA	313.1	189.7	168.5	21.3
KYAF	234A	CP	Firebaugh	CA	280.9	137.3	112.5	24.8
KWTY	233B1	CP -N	Cartago	CA	120.3	97.2	70.5	26.7



FIGURE 5 - FM CHANNEL STUDY

KBOS-FM - Ch. 235B - Tulare, CA

(used by Owens in Opposition Comments)

STATION HAS NO EXISTING SHORT SPACINGS

Calvary Chapel of Costa Mesa, Inc.

March 2011 - Reply Comments - RM-11620

CERTIFICATE OF SERVICE

I, Traci Maust, a secretary in the law office of Lauren A. Colby, do hereby certify that copies of the foregoing have been sent via first class, U.S. mail, postage prepaid, this 29th day of March, 2011, to the offices of the following:

Gregory L. Masters, Esquire
Wiley Rein, LLP
1776 K Street N.W.
Washington, D.C. 20006
(Counsel for Owens One Company, Inc.)


Traci Maust